

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CHARLES R. LAZUN, JR.	:	
	:	CIVIL ACTION
v.	:	
	:	
THE PRUDENTIAL INSURANCE	:	NO. 05-CV-00764
COMPANY OF NORTH AMERICA	:	

**J. SURRICK**

**FEBRUARY 16 , 2007**

**MEMORANDUM & ORDER**

Presently before the Court is Plaintiff's Motion For *De Novo* Review (Doc. No. 20), and the Response of Defendant The Prudential Life Insurance Company of America to Plaintiff's Motion for *De Novo* Review (Doc. No. 21), which requests an arbitrary and capricious standard of review. For the following reasons, Plaintiff's Motion will be denied.

**I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

On July 5, 1999, Plaintiff Charles Lazun suffered a stroke, causing him to suffer right-upper extremity weakness. At the time of his injury, Lazun was covered under a group insurance plan provided by his employer, Estes Express Lines ("Estes") and issued by Defendant Prudential Life Insurance Company. This policy provided long-term disability coverage to Estes employees. Shortly after suffering the stroke, Lazun applied to Prudential for long-term disability benefits. He began receiving the benefits on January 3, 2000. On December 26, 2000, Prudential terminated Lazun's benefits effective January 3, 2001. The termination followed a medical and vocational review that determined that Lazun was not fully disabled and could return

to work full-time in some vocation. On January 2, 2001, Lazun filed an appeal. After review, Prudential again determined that Lazun was no longer eligible for benefits and the appeal was denied. Plaintiff submitted a second appeal on February 8, 2002, which Prudential denied on March 14, 2002.

On December 16, 2006, Plaintiff filed this action in the Lehigh County Court of Common Pleas by filing a praecipe for writ of summons. Prudential filed a Notice of Removal to this Court on March 1, 2005. (Doc. No. 1). On March 29, 2005 Plaintiff filed a Complaint in the Lehigh County Court of Common Pleas. The Complaint alleged state law claims for breach of contract, bad faith, and breach of fiduciary duty, along with claims for violations of the Employee Retirement and Income Security Act (“ERISA”), 29 U.S.C. § 1001, et. seq. The record was transferred to this Court from Lehigh County on March 14, 2005. On April 21, 2005, Prudential filed a motion to dismiss the state law claims. Plaintiff failed to respond. On May 16, 2005, Plaintiff filed a second complaint. (Doc. No. 8). This complaint did not include the state law claims but did request a jury trial. On June 13, 2005, Prudential filed a motion to strike the jury demand. On July 14, 2005, Plaintiff filed a Motion For Clarification (Doc. No. 10) requesting that the first complaint be “marked withdrawn as moot,” and that the complaint filed on May 16, 2005 be the “controlling pleading.” On July 16, 2006, we dismissed Plaintiff’s initial complaint and directed that Plaintiff’s second complaint serve as the controlling pleading. We also granted Prudential’s motion to strike plaintiff’s jury demand. On April 26, 2006, after an Initial Pretrial Scheduling Conference with counsel at which the appropriate standard of review was discussed, an order was entered directing counsel to file memoranda setting forth their respective positions regarding the standard of review to be applied by the Court.

## II. LEGAL ANALYSIS

The sole issue presented by the Parties is whether a denial of benefits to Plaintiff under the ERISA plan in question should be reviewed *de novo* or under an arbitrary and capricious standard. Plaintiff argues that we should apply a *de novo* standard because the disability plan in question failed to confer discretion upon Estes, the plan administrator. In response, Prudential agrees that Estes is a plan administrator, but argues that the arbitrary and capricious standard should apply because Prudential serves as the claims administrator and has discretionary power to grant or deny Plaintiff's benefits.

In *Firestone Tire and Rubber Co. v. Burch*, the Supreme Court determined that a denial of benefits under ERISA "is to be reviewed under a *de novo* standard unless the benefit plan gives the administrator or fiduciary discretionary authority to determine eligibility for benefits or to construe the terms of the plan." 489 U.S. 101, 115 (1989). If an administrator or fiduciary is given such discretion, a court must review the denial of benefits under an arbitrary and capricious standard. *Welch v. Corestates Fin. Corp.*, No. Civ. A. 98-3533, 1999 WL 387276, at \*4 (E.D. Pa. June 2, 1999) (citing *Firestone*, 489 U.S. at 109)). Unlike *de novo* review, "the scope of this review is narrow, and the court is not free to substitute its own judgment for that of the administrator to determine a participant's eligibility for plan benefits." *Welch*, at \*4.

Plaintiff argues that Estes serves as the plan administrator, but it is Prudential not Estes that has the discretion to construe the plan and decide the eligibility for benefits. Plaintiff argues that because Estes does not have discretionary authority to determine his benefits, and because Estes is the plan administrator, the denial of benefits to Plaintiff should be reviewed under the *de novo* standard. We reject Plaintiff's argument.

ERISA defines “plan administrator” as “the person specifically so designated by the terms of the instrument under which the plan is operated,” or “if an administrator is not so designated, the plan sponsor.” 29 U.S.C. § 1002(16)(A)(i)-(ii). The plan in question here specifically designates Estes as the “Plan Sponsor” and “Plan Administrator.” (*See* Doc. No. 21, Ex. 3 at 32). However, identifying Estes as the plan administrator or sponsor does not end the inquiry. Under *Firestone*, the arbitrary and capricious standard applies if either an “administrator *or* fiduciary” has the discretion to determine eligibility for benefits. ERISA defines a fiduciary as one who “exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets, . . . or [] has any discretionary authority or discretionary responsibility in the administration of such plan.” *Id.* at § 1002(21)(A). Under this definition, Prudential is a fiduciary. It has discretionary authority to determine Plaintiff’s eligibility for benefits under the Plan. Moreover, the Summary Plan Description for this plan specifically provides:

In addition to creating rights for plan participants, ERISA imposes duties upon people who are responsible for the operation of the plan. The people who operate the plan, called “fiduciaries” of the plan, have a duty to do so prudently and in the interest of you and the other Plan participants and beneficiaries.

(Doc. No. 20 Ex. A at 38"). Prudential is responsible for the operation of this plan.

Under the circumstances, we conclude that Prudential’s denial of Plaintiff’s claim for

long-term disability benefits must be reviewed under the arbitrary and capricious standard.<sup>1</sup>

An appropriate Order follows.

---

<sup>1</sup> We note that another court in the district recently reviewed a claim for long-term disability benefits involving a plan provided by this same employer, Estes Express Lines, under an insurance contract provided by this same defendant Prudential Insurance Company of North America. The insurance contract was substantially similar to, if not the same as the insurance contract in this case. The court citing *Pinto v. Reliance Standard Life Insurance Co*, 214 F.3d 377 (3d Cir. 2000), concluded that the appropriate standard of review was a “heightened arbitrary and capricious standard.” See *Gigante v. Prudential Ins. Co. of N. Amer.*, 2005 WL 670696 (E.D. Pa. March 22, 2005).

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CHARLES R. LAZUN, JR.

v.

THE PRUDENTIAL INSURANCE  
COMPANY OF NORTH AMERICA

:  
:  
:  
:  
:  
:  
:

CIVIL ACTION

NO. 05-CV-00764

**ORDER**

AND NOW, this 16<sup>th</sup> day of February, 2007, upon consideration of Plaintiff's Motion for *De Novo* Review (Doc. No. 20), and Defendants' response thereto, it is ORDERED that Plaintiff's Motion is DENIED.

IT IS SO ORDERED.

BY THE COURT:

/s/ R. Barclay Surrick  
U.S. District Court Judge